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In The

Supreme Court of the United States

October Term, 1987

ROBERT S. CROWDER, SR., JULIA J. CROWDER, H. ALLAN McCARTNEY and HENRY C. COOPER,

Petitioners,

vs.

SOUTHERN BAPTIST CONVENTION and EXECUTIVE COMMITTEE OF THE SOUTHERN BAPTIST CONVENTION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

QUESTION PRESENTED

Did the United States Court of Appeals for the Eleventh Circuit correctly decide that the first amendment bars civil court resolution of a controversy involving a matter of ecclesiastical government?

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STATEMENT OF THE CASE

The Nature of the Case

This dispute concerns the internal affairs of a religious entity known as the Southern Baptist Convention. The petitioners are four Southern Baptists, who, along with 45,000 other persons, served as messengers at the Convention's annual meeting in 1985. At that 1985 meeting, a majority of the 45,000 messengers present and voting elected certain persons to serve on the Committee on Boards, Commissions and Standing Committees ("Committee on Boards"), which was the committee responsible for nominating persons at the 1986 Southern Baptist Convention to trusteeships of the various theological seminaries, missionary agencies and other agencies associated with the Convention.

The petitioners opposed the election of those persons and claimed that their election did not comply with the Convention's procedural rules. After the 1985 Convention, the petitioners asked the Convention's Executive Committee to overturn the election but the election was affirmed. Dissatisfied, petitioners filed suit in the district court below as a diversity action. On the respondents' motion, the district court dismissed this action as being beyond its jurisdiction under the First Amendment. On appeal, the Eleventh Circuit affirmed.

The opinion of the United States Court of Appeals for the Eleventh Circuit in this case is reported at 828 F.2d 718 (11th Cir. 1987) and is reprinted in the Appendix to the Petition. The opinion of the United States District Court is found at 637 F. Supp. 478 (N.D. Ga. 1986) and is included in the Appendix to the Petition. The respondents respectfully submit that the statements of

facts contained in these decisions are more accurate than the account set forth in the Petition.

The SBC and the 1985 Convention

The Southern Baptist Convention ("SBC") was incorporated by the Georgia Legislature in 1845 "for the purpose of eliciting, combining and directing the energies of the Baptist denomination of Christians [and] for the propagation of the Gospepl. . . ." 828 F.2d at 719, n.1. The petitioners were four of some 45,000 Baptist messengers who convened in Dallas, Texas for the 1985 Southern Baptist Convention. At that meeting, as with each of the annual meetings in previous years, the Committee on Boards was elected by a substantial majority of the registered messengers present and voting. The Committee on Boards that was elected at the 1985 Convention was responsible for nominating individuals at the 1986 Convention to be held in Atlanta, Georgia.

At the 1985 Convention, pursuant to Bylaw 16, the Committee on Committees submitted a slate of nominations to the Committee on Boards. Before the slate was voted on by the messengers, a motion was made by one of the Convention messengers, Messenger Slatton, to substitute a new and different slate of candidates. The Convention chair, Reverend Dr. Charles F. Stanley, ruled Messenger Slatton's motion out of order on the ground that substitute nominations could be proposed only on an individual by individual basis rather than by slate. Messenger Slatton appealed the chair's ruling to the floor of the Convention. A majority of the registered messengers that were present voted to overrule the chair's ruling and to allow the substitute slate of nominees. The 1985 Con-

vention then adjourned until the evening session. *Id.* at 719.

When the evening session convened, Reverend Dr. Stanley ruled Messenger Slatton's motion out of order again, but this time on the ground that nominations from the floor of the Convention were prohibited by Bylaw 16 because it stated that members nominated to the Committee on Boards "*shall be* nominated to the Convention by the Committee on Committees." *Id.* (emphasis added) The parliamentarian at the 1985 Convention explained that Bylaw 16 did not permit any motions from the floor of the convention to amend the list of nominations because the word "shall" indicated that the Committee on Committees was "excusively responsible" for providing the nominations. *Id.* Chairman Stanley then called for a vote on the nominations to the Committee on Boards and the nominations were approved by a majority of messengers. *Id.*

The Executive Committee's Affirmance of the Election

Several months after the 1985 Convention, the petitioners asked the Executive Committee of the SBC to use its "ad interim authority" to correct the alleged erroneous rulings made by Chairman Stanley regarding the election of the Committee on Boards. The Executive Committee affirmed the election of the Committee on Boards after finding that the Committee on Committees' nominees to the Committee on Boards would in the opinion of the Executive Committee have been elected even if the nominees offered from the floor had been voted upon and that messengers to the 1986 Convention could

reject the Committee's nominations from the floor. *Id.* at 720.

Disposition in the District Court

After the Executive Committtee ruled against them, the petitioners filed suit in the United States District Court for the Northern District of Georgia seeking a declaratory judgment interpreting certain bylaws of the SBC and declaring the 1985 election of the Committee on Boards to be invalid. A permanent injunction was also sought to forbid the elected committee members from serving. The respondents moved to dismiss on the ground that the first amendment bars civil court resolution of the intrachurch controversy.

The district court dismissed the suit and explained that "[i]t has long been a fundamental proposition that civil tribunals have no power to resolve disputes which are ecclesiastical in nature." 637 F. Supp. at 480. The district court rejected the petitioners' attempt to come within the narrow exception to the general rule that civil courts lack jurisdiction of church disputes but may resolve disputes regarding the ownership of church property. The petitioners had alleged that they had "a protectable property interest in insuring that officials within the organization are properly elected under the bylaws." *Id.* The district court found, however, that this was not the type of property dispute "contemplated by *Jones.*" *Id.*

The district court also rejected the petitioners' argument that all church-related disputes could be decided by civil courts if "neutral principles of law" are applied. The court found that "the doctrine of neutral principles of law is not relevant in deciding whether a court can

resolve a dispute, but is only applicable as a method of resolving a dispute over which a court has already determined it has jurisdiction." *Id.* In rejecting the petitioners' neutral principles argument, the district court stated that the petitioners had mischaracterized the dispute and that "[w]hat is actually at issue in this case is a question of church governance." *Id.* at 481. The district court then explained that the Supreme Court had made it "abundantly clear" that civil courts should not become "involved in disputes of this type." *Id.* (citing *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1871); *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976)). Having stated its reasons for dismissing the case, the district court concluded by holding that "this dispute is one involving questions of internal church affairs and governance over which this court has no jurisdiction." 637 F. Supp. at 482.

The 1986 Convention

At the 1986 Southern Baptist Convention which was convened in Atlanta, Georgia in June 1986, the messengers voted to amend Bylaw 16 to permit nominations for the Committee on Boards to be taken from the floor of the Convention on an individual by individual basis and not by slate. Additionally, the 1986 messengers elected the nominees proposed by the 1985 Committee on Boards for positions with various theological seminaries, missionary agencies and other agencies associated with the Southern Baptist Convention.

The Eleventh Circuit's Opinion

In affirming the judgment of the district court, the Eleventh Circuit held that "the first amendment bars civil court resolution of this controversy concerning a matter of ecclesiastical government." 828 F.2d at 727. The Eleventh Circuit found that the dispute was "one step removed from a major doctrinal conflict between two factions within the Southern Baptist Convention" and that the dispute regarding the election of the Committee on Boards involved " 'questions of church discipline and the composition of the church hierarchy' " which " 'are at the core of ecclesiastical concern.' " *Id.* at 726 (quoting *Serbian,* 426 U.S. at 716).

The Eleventh Circuit reviewed the Supreme Court cases that have addressed ecclesiastical disputes and explained that the Court has "attempted to strike an appropriate balance between the establishment and free exercise concerns" and "the interests of the state and the aggrieved party in resolution of the controversy by a court of law." 828 F.2d at 721. In reviewing this Court's decisions, the Eleventh Circuit opined that prior decisions had "recognized two primary first amendment issues that favor judicial noninvolvement in an ecclesiastical dispute." *Id.* at 722.

The first concern, the limit to be placed on civil courts deciding questions of religious doctrine or beliefs when resolving church property disputes, was recognized by this Court in *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872). The second concern, favoring judicial noninvolvement in religious disputes, requires civil courts to defer to decisions of religious tribunals that are established by religious or-

ganizations for resolving questions of internal discipline and governance. The Eleventh Circuit explained that "[t]he rule of deference to decisions of ecclesiastical bodies on matters of internal church governance was articulated in *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1 (1929)" and that the Court's subsequent decisions in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952) and *Serbian*, "made it clear that the principle of deference to decisions of church authorities applies to disputes concerning matters of internal church governance." 828 F.2d at 724.

After reviewing this Court's decisions, the Eleventh Circuit found that a majority of the messengers at the 1985 Convention had elected the nominees to the Committee on Boards and the Executive Committee of the SBC had affirmed the election. The Eleventh Circuit held that "[t]he first amendment strongly favors deference to such a decision by the highest church judicatory concerning a matter of church governance." *Id.* at 726. Additionally, the Eleventh Circuit found that the dispute bore only "a tangential relationship to property rights" and that the petitioners' interest in obtaining a civil court forum was "insubstantial" because they had already received a hearing before the highest SBC tribunal. *Id.* at 727.

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REASONS FOR DENYING THE WRIT

I. THE ELEVENTH CIRCUIT'S DECISION IS CORRECT BECAUSE THE FIRST AMENDMENT BARS CIVIL COURT RESOLUTION OF A CONTROVERSY INVOLVING A MATTER OF ECCLESIASTICAL GOVERNANCE.

The Eleventh Circuit correctly found that the first amendment bars judicial resolution of a dispute involving a matter of ecclesiastical government. The court rejected the petitioners' claim that they had an enforceable contract right under the SBC Bylaws and explained that civil courts would not have jurisdiction over the denial of these rights that were unrelated to any question of ownership of property.

Decisions of the Supreme Court from *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871) to *Jones v. Wolf*, 443 U.S. 595 (1979) have recognized the concern for abiding by the first amendment principle of separation between church and state that precludes civil court resolution of ecclesiastical controversies. A brief review of this Court's decisions confirms that the Eleventh Circuit's holding is consistent with the body of law established by this Court.

In *Watson v. Jones* the Court considered a controversy in which the civil court was asked to decide which of two groups of persons were the ruling elders of a hierarchical church. The Court deferred to the authoritative decision of the church on who its proper officers were, and in doing so held that ecclesiastical disputes are beyond the jurisdiction of civil courts. Included in the Court's list of ecclesiastical disputes were matters which concerned "theological controversy, church discipline, *ecclesiastical*

government, or the conformity of the members of the church to the standard of morals required of them." 80 U.S. (13 Wall.) at 733 (emphasis added). The Court explained its rationale for limiting civil resolution of these disputes as follows:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Id. at 728-29.

Additionally, the Court opined:

> "[T]he judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals."

Id. at 31 (quoting from *Ferraria v. Vasconcelles*, 23 Ill. 456 (1860)). The Court also stated that civil courts can-

not exercise jurisdiction over "a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standards of morals required of them." *Id.* at 733.

A year later in *Bouldin v. Alexander,* 82 U.S. (15 Wall.) 131 (1872) the Court stated that questions of membership in a church, and questions as to the "rights of members as such" were beyond the power of civil tribunals. *Id.* at 139.

The Court in *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94 (1952) found that religious organizations have a right to be "free from state interference, [in] matters of church government as well as those of faith and doctrine." In *Kedroff* the Court had to decide whether a piece of state legislation favoring one administrative body within a church over another administrative body within a church was consistent with the first amendment. The Court determined that a governmental effort to regulate the internal affairs of a church "violates our rule of separation between church and state." *Id.* at 110. Eight years later in *Kreshik v. St. Nicholas Cathedral,* 363 U.S. 190 (1960) the Court considered the *Kedroff* facts again, after the state courts had applied the common law, and ruled that the prohibitions of the first amendment applied to legislative and judicial action to interfere with church governance. *Id.* at 191.

In *Serbian, supra,* the Supreme Court listed "matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law" as being beyond the power of the civil courts to decide. 426 U.S. at 713. The Court also

held that the first and fourteenth amendments allow religious organizations "to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters" and that when "ecclesiastical tribunals are created to decide disputes" the "Constitution requires that civil courts accept their decisions as binding upon them." 426 U.S. at 724-25.

Finally, the Court in *Jones v. Wolf* confirmed throughout its opinion that matters of church government and polity[1] are immune from civil adjudication. 443 U.S. at 602-03, 605, 607-08. First, the Court in *Jones v. Wolf* recognized that "the First Amendment prohibits civil courts from resolving . . . disputes on the basis of religious doctrine *and practice*," and the Court supported that statement by citing to page 710 of the *Serbian* decision. 443 U.S. at 602 (emphasis added). The page cited from *Serbian* refers to the principle prohibiting resolution of doctrinal disputes and states that "[t]his principle applies with equal force to church disputes over church polity and church administration." *Serbian*, 426 U.S. at 710. The Court confirmed this a second time in *Jones v. Wolf* when it noted that civil courts must "defer to the resolution of issues of religious doctrine *or polity*. . . ." *Jones v. Wolf*, 443 U.S. at 602 (emphasis added). Ultimately, the Court rejected any approach that would "*require 'a searching and therefore impermissible inquiry into church*

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[1] The word "polity" is derived from the Latin word "politia" meaning, *inter alia*, administration of government. "Polity" is currently defined to mean many things, including the management of private affairs and the form of government of a religious denomination. *Id.*

polity.'" Id. at 605, *citing Serbian*, 426 U.S. at 723 (emphasis added).

In sum, this Court has consistently held for over a century that the first amendment will not permit civil courts to become entangled in disputes concerning internal church governance and administration. Thus, the Eleventh Circuit, in affirming the dismissal by the district court, followed repeated holdings of the Supreme Court recognizing the right of religious organizations to be free from state interference. The Court of Appeals, on the basis of the clear and consistent precedent of this Court, correctly decided that the first amendment barred civil court resolution of a dispute involving a matter of ecclesiastical government.

II. THE ELEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

A. There Is No Conflict With Jones v. Wolf.

Petitioners contend that the Eleventh Circuit's decision conflicts with *Jones v. Wolf* because "[p]ervading the Court of Appeals' analysis of the first amendment issue and motivating its deference to the Executive Committee's action is the assumption that the first amendment *requires* civil courts to accept as binding any decisions made by church tribunals in a dispute over matters of internal governance." (Petition at 11, 12.) The Eleventh Circuit, however, did not explain that *Jones v. Wolf* requires deference to decisions of a church tribunal but stated as follows:

> The *Jones* majority thus recognized and reaffirmed the importance of the second major first

> amendment interest favoring judicial noninvolvement in a religious dispute: that where religious organizations establish rules for their internal discipline and governance, and tribunals for adjudicating disputes over these matters, "the Constitution requires that civil courts accept their decisions as binding upon them." *Milivojevich*, 426 U.S. at 725, 96 S. Ct. at 2387-88. The disagreement between the justices in *Jones* reflects differing assessments of the extent to which resolution of the property dispute at issue in that case by adherence to this principle might involve a greater intrusion into religious affairs than would resolution by the "neutral principles of law" method.

828 F.2d at 724. Later in its opinion the Eleventh Circuit explained that one of the factors it considered was the deference favored by the first amendment to decisions "by the highest church judicatory concerning a matter of church governance." *Id.* at 726. The Eleventh Circuit found that the Executive Committee had affirmed the election of the 1985 Committee on Boards at the 1985 Convention.

The petitioners also contend that the Eleventh Circuit's opinion conflicts with *Jones v. Wolf*, because it does not apply "Georgia's neutral principles of law approach" which *Jones* held to be consistent with the first amendment and which Georgia[2] has chosen to apply to the pre-

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[2] The petitioners cite two Georgia cases in support of their argument that Georgia courts adopted the "neutral principles of law" approach following the Court's suggestion in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969). *See Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied*, 396 U.S. 1041 (1970); *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976). Both of these cases involved disputes over church property which occurred after the local churches had withdrawn from the general churches, and thus have no bearing on the present case concerning internal church goverance and administration.

cise type of intrachurch dispute presented in this case." (Petition at 16). The petitioners, however, do not state how their dispute with the SBC is the type of property dispute that *Jones v. Wolf* held must be present before a civil tribunal can decide whether it could adjudicate a church-related dispute.

B. There Is No Conflict With Bouldin v. Alexander.

The petitioners claim that the Eleventh Circuit's decision conflicts with *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131 (1872) because in *Bouldin* "this Court resolved precisely the kind of dispute at issue in this case—namely, a dispute concerning the procedural regularity of an election under a congregational church's rule of government." (Petition at 16).

This Court in *Bouldin*, however, specifically stated that it was only deciding the rights of property. The Court stated:

> This is not a question of membership of the church, nor of the rights of members as such. It may be concluded that we have no power to revise or question ordinary acts of church discipline, or of excision from membership. We have only to do with rights of property.

Id. at 139. In *Bouldin*, the Court was asked to decide whether church property was held in trust by a group of trustees who had not been elected by a majority of the trust members. The Court found that in a congregational church the majority would determine title to church property. Moreover, the Court deferred to an election by a congregational majority which is a result the petitioners

are seeking to avoid. *Bouldin* furnishes no support for the petitioners in their attempt to obtain certiorari because the present dispute does not involve property rights. *Id.* at 140.

C. The Eleventh Circuit Did Not Misinterpret Serbian.

The petitioners also contend that the Eleventh Circuit gave *Serbian* "a far more expansive interpretation than is warranted by this Court's rationale" and incorrectly "established a blanket rule of compulsory deference to the decisions of ecclesiastical bodies on matters of internal church governance." (Petition at 17). The Eleventh Circuit, however, only discussed the rule of deference to decisions of ecclesiastical bodies on matters of internal church governance as a "second major first amendment interest favoring judicial noninvolvement in a religious dispute." 828 F.2d at 726. In considering the rule of deference, the Court of Appeals relied not only on *Serbian*, but also on *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1 (1929) and *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952) as having articulated this rule.

The petitioners also argue that the Court in *Serbian* examined church documents, including the church constitution, because the first amendment problem did not involve a matter of internal church governance, but only concerned judicial resolution of doctrinal questions and that the Eleventh Circuit erred in applying *Serbian* to matters of church governance. (Petition at 18). The Court in *Serbian*, however, specifically stated that the

first amendment principle that precludes civil court resolution of church property disputes involving underlying controversies over religious doctrine applies "with equal force to church disputes over church polity and church administration." 426 U.S. at 710.

Additionally, the petitioners contend that the Eleventh Circuit erred in applying *Serbian* to a congregational dispute. The Eleventh Circuit correctly explained in its opinion:

> Appellant's argument that the SBC has a congregational, rather than a hierarchical, form of church governance does little to help their position. The distinction drawn in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1872) between the types of congregational and hierarchical church polities was relevant only to determining the ecclesiastical body to which the civil court must defer in determining rights to use of property. If a congregational form of government is involved and the will of a majority of church members is to control, then the court will enforce the right of a majority of members to use the church property. If the congregational church has officers "in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property." *Id.* at 725, 20 L.Ed. 666. Under either form of congregational polity, however, the election of the Committee on Boards by the messengers at the 1985 Convention and the affirmance of that decision by the Executive Committee are entitled to deference.

828 F.2d at 726-27, n.20. If the petitioners claim that a majority of the messengers is the "ultimate decision-making authority within the SBC," it is difficult to understand how the petitioners can contend that the 1985

Committee on Boards was not validly elected by a majority vote at the 1985 Convention.

III. THE ELEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH DECISIONS OF OTHER CIRCUITS OR STATE COURTS.

In an attempt to support their position that the first amendment does not bar resolution of intrachurch disputes that can be decided by the application of neutral principles of law, petitioners cite several state court cases that deal primarily with church property disputes and do not involve the controversy present in this case.

A. Georgia Cases.

The petitioners argue that the district court and the Eleventh Circuit failed to follow decisions of the Georgia courts, relying principally on only two cases: *Reddick v. Jones,* 251 Ga. 195, 304 S.E.2d 389 (1983) and *Gervin v. Reddick,* 246 Ga. 56, 268 S.E.2d 657 (1980). In both cases, however, the Supreme Court of Georgia viewed its decisions as settling disputes over property rights, not disputes over questions of internal church procedures. *Gervin,* 246 Ga. at 57, 268 S.E.2d at 657; *Reddick,* 251 Ga. at 196, 304 S.E.2d at 390.

In *Gervin,* a group representing the majority of a congregation sued to regain control of church assets. 246 Ga. at 58, 258 S.E.2d at 658. The Supreme Court found that the lower court had jurisdiction to decide whether the majority was entitled to control church property, but also found that the lower court erred in attempting to regulate the internal affairs and doctrine of the church by appointing a special master. 246 Ga. at 59, 268 S.E.2d at 659.

There was no discussion by the Supreme Court of the application of the neutral principles of law. *Gervin* is not analogous to this case because here only four dissident messengers are challenging a decision by the majority and they do not seek title to property.

The Supreme Court of Georgia in *Reddick* applied the neutral principles of law to a church dispute only after the court found that it had jurisdiction because a property right was involved in the suit brought by a pastor challenging the termination of his rights to the benefits of his office. In discussing an order of the lower court that had attempted to regulate the internal affairs of a church, the Supreme Court of Georgia opined that it appeared that the lower court had erred because its order exceeded the court's jurisdiction over the property question. 251 Ga. at 197, 304 S.E.2d at 391. Neither of these two cases held that a court can apply neutral principles of law to an intra-church dispute that does not involve property rights.

It is quite clear in any event, however, that petitioners have aimed far wide of the mark in relying on state court decisions to establish the boundaries of federal constitutional law. The Court of Appeals rejected this approach as inherently unsound: "Georgia courts are powerless to adjudicate religious disputes where doing so violates the United States Constitution." 828 F.2d at 727, n.21.

B. Other Non-Georgia Decisions.

Another Circuit Court of Appeals has held that the neutral principles of law doctrine should not be applied to religious controversies over church government. The Sixth Circuit in *Hutchison v. Thomas*, 789 F.2d 392 (6th

Cir.), *cert. denied*, 107 S. Ct. 277 (1986) declined to apply the neutral principles of law doctrine when deciding a suit brought by a Methodist minister challenging his enforced retirement:

> The "neutral principles" doctrine has never been extended to religious controversies in the area of church government, order and discipline, nor should it be. The claim here relates to appellant's status and employment as a minister of the church. It therefore concerns internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom, and law. *See Kaufmann v. Sheehan*, 707 F.2d 355, 358 (8th Cir. 1983). The neutral principles doctrine relating to church property is simply not applicable in the instant case.

Id. at 396. The Court of Appeals specifically limited the application of neutral principles of law to church property disputes that do not involve internal church disputes over "government, order and discipline." *Id.*

A federal district court in *Nunn v. Black*, 506 F. Supp. 444 (W.D. Va. 1981), *aff'd*, 661 F.2d 925 (4th Cir. 1981), applied the principles of *Serbian* to reject jurisdiction over claims by dissident church members concerning their expulsion, despite the fact that the church had "no structured decision-making process." *Id.* at 448. The court explained:

> [I]t is clear that the fact that the local church may have departed arbitrarily from its established expulsion procedures in removing the plaintiffs is of no constitutional consequence . . . . Thus, the plaintiffs' contentions that their due process rights were violated in that their contributions to the church were expropriated by the expulsion is of no merit. Similarly, the above conclusion is not varied by the fact that the

> Church of God of Prophecy has no structured decision-making process.

Id.

Another federal district court in *Hafner v. Lutheran Church-Missouri Synod*, 616 F. Supp. 735 (N.D. Ind. 1985) refused to interpret a church constitution in a case brought by the plaintiff minister to recover the expenses of his disability which he claimed he was entitled to under the constitution of his church. The district court explained:

> If the plaintiffs are correct it will become the function of this court to interpret that provision of that church constitution. Such an inquiry is the kind of inquiry that was requested of and rejected by the Supreme Court of the United States in the *Serbian Eastern Orthodox Diocese* case . . . .

Id. at 737.

Courts in other jurisdictions have relied on *Serbian* rather than the neutral principles of law doctrine in deciding whether to exercise jurisdiction over nonproperty church disputes. *See United Pentacostal Church International, Inc. v. Sanderson*, 391 So. 2d 1293, 1298 (La. Ct. App. 1980) (court followed *Serbian* in refusing to exercise jurisdiction in a case brought by former church members challenging their termination on the church's board of directors in violation of the laws of the congregational church); *Hill v. Sargent*, 615 S.W.2d 300 (Tex. Civ. App. 1981) (court followed *Serbian* and refused to determine the validity of a meeting electing certain church officers); *Martin v. Lewis*, 688 S.W.2d 72 (Tenn. Ct. App. 1984) (court followed *Serbian* and reversed a lower court decision interpreting the bylaws of a nonprofit religious corporation and invalidating an election).

These cases clearly support the application of *Serbian* rather than the neutral principles of law to nonproperty disputes over the internal affairs of a church. *Serbian* prohibits courts from interpreting church rules or deciding whether they have been properly interpreted, which is exactly what the petitioners want this Court to do.

The petitioners rely principally on two cases in support of their position that numerous state courts of last resort have interpreted *Jones* to allow civil court resolution of disputes "indistinguishable from the one involved in the instant case." (Petition at 25) (citing *Reid v. Gholson*, 229 Va. 179, 327 S.E.2d 107, *cert. denied*, 474 U.S. 824 (1985), and *Reardon v. Lemoyne*, 122 N.H. 1042, 454 A.2d 428 (1982)). *Reardon*, however, did not involve an issue regarding an internal dispute over an election of a committee; rather, the dispute involved a suit brought by four nuns against the bishop, superintendent and school board members to enforce employment contracts. The Court found that:

> Civil courts are permitted to consider the validity of non-doctrinal contractual claims which are raised by parties to contracts with religious entities. This requires the courts to evaluate the pertinent contractual provisions and extrinsic evidence in case of ambiguity, to determine whether any violations of the contract have occurred, and to order appropriate remedies, if necessary.

454 A.2d at 432.

Reid v. Gholson, the other case cited by petitioners, involved a dispute within a large, independent congregational church that had no written constitution or bylaws and had traditionally been governed by a majority vote of

its members at annual congregational meetings. The facts of this case are not even remotely similar to the dispute between the petitioners and respondents in this case.

Whatever one may think about the wisdom or the constitutionality of these state court decisions, they do not supersede one-hundred years of precedent from this Court forbidding civil courts from intruding into matters of internal church governance and administration. That precedent is clear and unambiguous, and it was correctly applied by the district court and the Court of Appeals in the present case. Respondents submit that further review under these circumstances is unnecessary and should not be granted.

IV. THIS CASE DOES NOT PRESENT AN IMPORTANT FIRST AMENDMENT QUESTION THAT SHOULD BE ADDRESSED BY THIS COURT.

The Supreme Court has consistently held that property rights must be involved before a court can exercise jurisdiction in a church dispute. There is no "strong state interest" in providing a judicial forum for the peaceful resolution of an intrachurch dispute that does not affect title to property. The petitioners have not cited any decision of this Court that supports civil court resolution of a church dispute like this one. Georgia and other states have not opened their courts to nonproperty disputes and have not found a strong state interest in resolving "intangible personal rights as those reflected in a church's corporate bylaws." (Petition at 28).

Statements that this decision "removes a large category of disputes from all courts and affects all religious entities" and a reference to the first amendment as a

"handmaiden of arbitrary lawlessness" do not justify granting a petition for a writ of certiorari. (Petition at 28, 29). This Court has consistently recognized the protection afforded by the first amendment to religious organizations to be "free from state interference, [in] matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 110. *See* discussion in Section I, *supra*, at 8-12. A claim that the Eleventh Circuit's opinion leaves the "members of religious bodies unable to peacefully resolve matters of governance that do not require decisions about doctrine or belief" is simply not true. (*See* Petition at 29). The petitioners had several means within the SBC to resolve this dispute. A majority of messengers to the 1985 Convention elected the Committee on Boards; if the petitioners had been in the majority they could have rejected the slate of nominees to the Committee on Boards. The nominees of the Committee on Boards to SBC theological seminaries, missionary agencies and boards were elected by a majority of messengers at the 1986 Convention. The majority of messengers at the 1986 Convention amended the SBC bylaws to permit individual nominations from the floor to the Committee on Boards. Certainly, this Court should not overturn the majority vote of the Southern Baptist Convention to afford the petitioners a civil court forum to raise "intangible personal rights."

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CONCLUSION

The Petition for a Writ of Cetriorari should be denied because it does not meet any of the reasons stated by Rule 17 of the Supreme Court Rules in that the Eleventh Circuit Opinion (1) does not conflict with the decision of another court of appeals; (2) does not conflict with a state court of last resort; (3) does not conflict with prior Supreme Court decisions; and (4) has not decided an important question of federal law that should be settled by this Court.

Respectfully submitted,

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